

AO 106A (08/18) Application for a Warrant by Telephone or Other Reliable Electronic Means

UNITED STATES DISTRICT COURT

for the
District of New Mexico


FILED
United States District Court
Albuquerque, New Mexico

Mitchell R. Elfers
Clerk of Court

In the Matter of the Search of

(Briefly describe the property to be searched
or identify the person by name and address)

Silver 2017 Nissan Altima; NM license plate 076WJC; VIN
1N4AL3AP0HC247186; located at FBI Farmington Resident
Agency, 215 W. Elm Street, Farmington, NM 87401

Case No. 22-MR-1709

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

Silver 2017 Nissan Altima; NM license plate 076WJC; VIN 1N4AL3AP0HC247186; located at FBI Farmington Resident Agency, 215 W. Elm Street, Farmington, NM 87401

located in the _____ District of _____ New Mexico _____, there is now concealed (identify the person or describe the property to be seized):
See Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

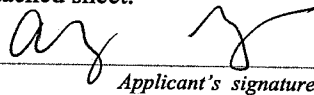
- ☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 U.S.C. § 1153	Offenses committed in Indian Country
18 U.S.C. § 113(a)(6)	Assault resulting in serious bodily injury

The application is based on these facts:
Please see attached affidavit.

- ☒ Continued on the attached sheet.
☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

Alyson Berry/FBI Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
 _____ telephone _____ (specify reliable electronic means). And submitted electronically by email

Date: November 15, 2022

City and state: Farmington, New Mexico



Judge's signature

B. Paul Briones, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT

I, Alyson M. Berry, being duly sworn, depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI"), where I have been employed in that capacity since July 2020. I am currently assigned to the Albuquerque Division of the FBI, Farmington Resident Agency, and have primary investigative responsibility for crimes that occur in Indian Country, including violent crimes such as homicide, robbery, aggravated assault, and child sexual assault. In 2021, I attended an advanced Indian Country Crime Scene Investigation course, including techniques for evidence collection and best practices for historical child sex assaults.

2. The information set forth in this affidavit has been derived from an investigation conducted by the Farmington Resident Agency of the FBI, Navajo Nation Department of Criminal Investigations, and Navajo Police Department. At approximately 8:00 p.m. on November 9, 2022, these agencies responded to a vehicle crash on Highway 491 approximately 8 miles north of Northern Navajo Medical Center at mile marker 102 in Shiprock, New Mexico.

3. Two vehicles were involved in the crash, including a silver 2017 Nissan Altima (referred to as Target Vehicle), bearing New Mexico license plate number 076WJC, vehicle identification number (VIN) 1N4AL3AP0HC247186, and registered to the driver, KYLE RAY NELSON, year of birth 1991 (referred to herein as "NELSON"). Based on the facts set forth in this affidavit, there is probable cause to believe there were violations of 18 U.S.C. § 1153 Offenses committed in Indian Country and 18 U.S.C. § 113(a)(6) Assault resulting in serious bodily injury.

4. The Target Vehicle is equipped with an Event Data Records (EDR) that may contain data from the crash including information such as pre-impact speed, throttle position,

engine RPM, brake usage, and seatbelt usage. New Mexico State Police has equipment to gain access to this device and the data therein. Based on my training and experience, your affiant understands the data retrieved from the EDR can be used in assisting with the investigation and can determine information regarding the vehicle's operation at the time of the crash, including possible speed of the vehicle at the time of the crash.

5. Based on additional information provided within this affidavit, your affiant believes that evidence of a crime can be found by conducting a search for physical items related to drug or alcohol consumption, including illegal substances, drug paraphernalia, bottles, receipts of purchase, cans, and other items known to hold drugs or alcoholic beverages within the Target Vehicle. Photographs of both the interior and exterior of the vehicle will also assist in the investigation.

6. This search warrant is for the purpose of searching the Target Vehicle for physical items described in paragraph 5 and securing the information held within the EDR of the to include processing and analyzing data extracted from the EDR.

7. This affidavit is intended to show there is probable cause for the requested search warrant and does not set for all of my knowledge about this matter. The statements in this affidavit are based on my personal knowledge, information that I have received from other law enforcement personnel, and from persons with knowledge regarding relevant facts. Because this affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning this investigation. I have set forth facts that I believe are sufficient to establish probable cause to believe that evidence of the crimes alleged are in the target locations.

PROBABLE CAUSE

8. On November 9, 2022, two witnesses observed a silver 2017 Nissan Altima, later identified as the Target Vehicle, driving erratically down the center of the road on Highway 491 southbound, north of Shiprock, New Mexico. The witness vehicles were also traveling on Highway 491, which has a speed limit of 65 miles per hour in this area, but ranges in limits of 45 miles per hour to 65 miles per hour depending on the location.

9. Traveling northbound on Highway 491 at approximately 65 miles per hour was an older model red Dodge Ram truck, with a driver identified with initials T.H. and year of birth 1991 (herein referred to as John Doe 1), his father in the passenger seat, identified with initials C.H. and year of birth 1955 (herein referred to as John Doe 2), and his mother in the back seat, identified with initials C.J. and year of birth 1954 (herein referred to as Jane Doe).

10. The Target Vehicle drove down the middle of the highway at an unknown speed, striking the truck driven by John Doe 1 head-on. The truck rolled multiple times, coming to rest on its tires, pointing in a southwest direction. Jane Doe was ejected from the truck and landed on the highway. Approximately 70 yards away, the Target Vehicle came to rest off the west side of Highway 491, facing east.

11. John Doe 1 suffered a broken ankle and head laceration. He had to be pried from the truck by the Navajo Fire Department. John Doe 2 suffered a broken wrist. John Doe 2 exited the vehicle to find his wife, Jane Doe. Jane Doe's injuries were most significant, to include a broken pelvis and other serious injuries. All three victims were treated at Northern Navajo Medical Center. While John Doe 1 and John Doe 2 were released, Jane Doe was flown to San Juan Regional Medical Center (SJPMC) for upgraded care. She remains hospitalized. NELSON

walked away from the accident with minimal injuries but was treated at Northern Navajo Medical Center as well.

12. Navajo Police Department briefly interviewed NELSON at the scene. NELSON said he had a fight with his friend or brother and didn't know what was going on. NELSON thought he was in Kirtland, a neighboring town, and told officers he was going to his sister's house. NELSON said he was not suffering any pain. Officers smelled alcohol on his breath, noticed him stumbling, and located numerous alcohol bottles and two glass pipes on the passenger seat and floor of his vehicle. NELSON admitted to smoking marijuana earlier in the day and drinking alcohol approximately two hours before the vehicle accident.

13. Your affiant and Criminal Investigator Dean Goldtooth attempted to interview the victims and subject at Northern Navajo Medical Center. John Doe 1 was sedated, getting his ankle treated, and could not be interviewed. John Doe 2 explained he was sitting in the front passenger seat and his wife was ejected from the truck when it rolled. He did not know how many times the truck rolled. John Doe 1 and John Doe 2 were wearing seatbelts. Jane Doe was not. Jane Doe was in extreme pain and getting treated in the trauma room. She was unable to be interviewed. Her injuries were disclosed by medical personnel. NELSON was interviewed last.

14. During NELSON's interview, his eyes remained closed for the majority of the time, and he appeared to be under the influence. NELSON was confused about what happened and could not give his version of events. He remembered drinking a pint of Fireball sometime in the morning or at 3:30 p.m. He claimed to only smoke cigarettes, and said he did not smoke methamphetamine or marijuana. According to NELSON, he got off of work at 3:30 p.m. in Cortez, Colorado, and woke up at Northern Navajo Medical Center approximately six hours later

with no explanation. He believed scratches on his face were from a fight he had multiple days prior. NELSON claimed to be wearing his seatbelt at the time of the crash.

15. Your affiant followed the tow truck with the Target Vehicle from the accident scene to the FBI Farmington Resident Agency parking lot, which is a secured facility.

16. The incident under investigation occurred within the exterior boundaries of the Navajo Nation Indian Reservation. NELSON, John Doe 1, John Doe 2, and Jane Doe are all registered members of the Navajo Nation.

BACKGROUND ON EVENT DATA RECORDERS (EDRs)

17. Based on my training and knowledge obtained from New Mexico State Police (NMSP) crash reconstruction agents, the National Highway Traffic Safety Administration (NHTSA), and other law enforcement agents and officers, I know the following:

- a. An Event Data Recorder (herein after referred to as an “EDR”), is a device installed in a motor vehicle to record technical vehicle and occupant information for a brief period of time before, during, and after a crash.
- b. EDRs may record (1) pre-crash vehicle dynamics and system status; (2) driver inputs; (3) vehicle crash signature; (4) restraint usage/deployment status; and (5) post-crash data such as the activation of an automatic collision notification (ACN) system.
- c. EDRs record information related to an “event,” such as a vehicle crash.
- d. The NMSP has equipment to access the EDRs located in vehicles and download the data therein.

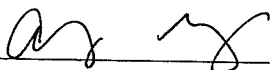
AUTHORIZATION REQUEST

18. Based on the facts set forth in this affidavit, there is probable cause to believe there were violations of 18 U.S.C. § 1153 Offenses committed in Indian Country and 18 U.S.C. § 113(a)(6) Assault resulting in serious bodily injury.

19. Supervisory Assistant United States Attorney Elisa Dimas, District of New Mexico, reviewed and approved this affidavit requested approval to search the Target Vehicle.


20. I swear and affirm that this information is true and correct to the best of my knowledge and belief.

Respectfully submitted,



Alyson M. Berry, Special Agent
Federal Bureau of Investigation

Telephonically sworn and electronically signed on this 15th day of November 2022.



United States Magistrate Judge

ATTACHMENT A

PROPERTY TO BE SEARCHED

1. A silver 2017 Nissan Altima, bearing New Mexico license plate number 076WJC, vehicle identification number (VIN) 1N4AL3AP0HC247186, located at the FBI Farmington Resident Agency, 215 W. Elm Street, Farmington, New Mexico, identified as the Target Vehicle.
2. Event Data Records (EDR) located within the Target Vehicle.

ATTACHMENT B

PROPERTY TO BE SEIZED

1. Physical items related to drug or alcohol consumption, including illegal substances, drug paraphernalia, bottles, receipts of purchase, cans, and other items known to hold drugs or alcoholic beverage.
2. Photographs of the interior and exterior of the Target Vehicle.
3. Data retrieved from the Event Data Recorder (EDR). This warrant authorizes a review of electronic storage media and electronically stored information seized or copied pursuant to this warrant in order to locate evidence, fruits, and instrumentalities described in this warrant. The review of this electronic data may be conducted by any government personnel assisting in the investigation, who may include, in addition to law enforcement officers and agents, attorneys for the government, attorney support staff, and technical experts. Pursuant to this warrant, the FBI may deliver a complete copy of the seized or copied electronic data to the custody and control of the attorneys for the government and their support staff for their independent review.